

D. GEORGE SWEIGERT
GENERAL DELIVERY
NEVADA CITY, CA 95959

June 9, 2021

District Judge Valerie E. Caproni
U.S. District Court
500 Pearl Street
New York, New York 10007-1312

SUBJ: Request for clarification as to the issue of “actual malice”
1:18-cv-08653-VEC-SDA

Your Honor,

Ambiguity as to “actual malice” threshold

1. Pending before the Court is a motion for summary judgement pursuant to New York Consolidated Laws, Civil Rights Law CVR §76-A (ECF no. 277, 278, 279, 280) presumably to the threshold of “actual malice” (retroactively applied). The threshold issue of “actual malice” (imposed inequity) has not been articulated in recent ORDERS (ECF no. 261 and 270).

Therefore, the Plaintiff is unclear as to what threshold standard applies.

2. The Second Amended Complaint (ECF no. 88) and the first Supplemental Complaint (ECF no. 150) do not allege “actual malice” as this was not a threshold requirement prior to the passage of the amended CVR §76-A on November 10, 2020.

3. These documents (Dkt. 88, 150) do include the use of the term “malice” to describe the Defendant’s actions. As another S.D.N.Y. federal court addressed the New York anti-SLAPP amendment and concluded that the amendment to § 76-a applies in federal court and has retroactive effect. See *Palin v. New York Times Co.*, ___ F. Supp. 3d ___, 2020 WL 7711593, at *3-4 (S.D.N.Y. Dec. 29, 2020).

4. As outlined in ORDER (ECF no. 270) the Plaintiff has not been allowed discovery (ECF no. 261) in this area of “actual malice” and therefore this Court has apparently imposed an inequity upon the Plaintiff by the retroactive application of CVR §76-A to this litigation, which creates a matter that is subject to interlocutory appeal. *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-07, 92 S. Ct. 349, 30 L. Ed. 2d 296 (1971) .

Respectfully,



D. Geo. Sweigert

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CERTIFICATE OF SERVICE

The undersigned hereby attests under penalties of perjury that copies of this communication have been sent via electronic mail message to the following parties on the ninth day of June (6/9), two thousand and twenty-one (2021).

Clerk of the Court, Room 200 temporary_pro_se_filing@nysd.uscourts.gov	Jason Goodman, CEO truth@crowdsourcethetruth.org
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D. GEORGE SWEIGERT
Pro Se Non-Attorney